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IN THE
COURT OF APPEALS OF INDIANA

COREY PRESTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0701-CR-38
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0505-FB-55

May 9, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Corey Preston appeals his consecutive sentences for Class B felony dealing in cocaine and Class C felony contributing to the delinquency of a minor. We affirm.

Issue

The sole restated issue Preston raises on review is whether his sentence is appropriate.

Facts

On May 5, 2005, Preston approached an undercover police officer and sold him a small quantity of cocaine. Preston then returned to his car, handed the money to his fourteen-year old daughter, and instructed her to hide it.

The State charged Preston with Class B felony dealing in cocaine and Class C felony contributing to the delinquency of a minor. On the day of trial, Preston pled guilty. The trial court sentenced him to ten years for dealing in cocaine and five years for contributing to the delinquency of a minor, to be served consecutively. Preston now appeals.

Analysis

Preston argues that his sentence is inappropriate in light of the nature of the offense and his character under Indiana Appellate Rule 7(B). Preston committed this offense after our legislature replaced the "presumptive" sentencing scheme with the present "advisory" sentencing scheme. We are awaiting guidance from our supreme court as to how appellate review of sentences under the new "advisory" scheme should proceed and whether trial courts must continue issuing sentencing statements explaining

the imposition of any sentence other than an advisory sentence. See Gibson v. State, 856 N.E.2d 142, 146-47 (Ind. Ct. App. 2006). This court has split on the issue of whether such statements still must be issued. Compare Fuller v. State, 852 N.E.2d 22, 26 (Ind. Ct. App. 2006), trans. denied (holding that a trial court is under no obligation to find or weigh any aggravating or mitigating circumstances) with McMahon v. State, 856 N.E.2d 743, 749 (Ind. Ct. App. 2006) (holding sentencing statements must be issued any time trial court deviates from advisory sentence).

Whether or not sentencing statements are required, such statements are very helpful to this court in determining the appropriateness of a sentence under Indiana Appellate Rule 7(B). Gibson, 856 N.E.2d at 147. The trial court here did issue a sentencing statement, and we will utilize it to assist us in determining whether the sentence imposed here was inappropriate. Id. Under Indiana Appellate Rule 7(B), we may revise a sentence that we conclude is inappropriate in light of the nature of the offense and the character of the offender. We perform this review while considering as part of that equation the findings made by the trial court in its sentencing statement. We understand that this is, by necessity, part of our analysis here, but it does not limit the matters we may consider. See Gibson, 856 N.E.2d at 149; see also McMahon, 856 N.E.2d at 750 (noting that review under Rule 7(B) is not limited "to a simple rundown of the aggravating and mitigating circumstances found by a trial court.").

The State directs our attention to Preston's failure to present a cogent argument that his sentence is inappropriate under Indiana Appellate Rule 7(B), in that Preston neglected to discuss the nature of the offenses or his character. Appellee's Br. p. 5. The

failure to make a cogent argument typically results in a waiver of that issue. See McMahon, 856 N.E.2d at 751. However, we will consider his appeal despite this failure because Preston has argued the trial court's weighing of the aggravating and mitigating circumstances, which informs our analysis under Rule 7(B).

Preston argues that the trial court should have considered his guilty plea as a mitigating factor. In issuing its sentence, the trial court accepted Preston's plea of guilty and found that the aggravating circumstances were his prior criminal convictions and his failed attempts at rehabilitation. The court found one mitigating factor, his drug addiction.

Generally, a guilty plea is accorded mitigating weight. Where the State reaps a substantial benefit from the defendant's act of pleading guilty, the defendant deserves to have a substantial benefit returned. Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999). In Cotto v. State, 829 N.E.2d 520, 525-26 (Ind. 2005), our supreme court held that the defendant's guilty plea was entitled to some mitigating weight because he pled guilty on the morning of trial without the benefit of a plea agreement and wrote a four-page letter expressing remorse for his actions. However, a guilty plea is not automatically a significant mitigating factor. Payne v. State, 838 N.E.2d 503, 508 (Ind. Ct. App. 2005), trans. denied. In Payne, we found the defendant's guilty plea was entitled to minimal mitigating weight. Id. at 509. The defendant pled guilty on the morning of trial because he wanted to spare the victims from having to testify; however, the plea deserved less weight because he received a benefit from the guilty plea in that

the State dismissed three charges. Id. We also found that the plea was entitled to less mitigating weight because the defendant's remorse was "debatable." Id.

Similar to Cotto, Preston pled guilty on the morning of his trial without the benefit of a plea agreement. He stated that the reason for the guilty plea was to spare his daughter from having to testify. However, similar to Payne, Preston's acceptance of responsibility and remorse is questionable. During the sentencing hearing, Preston acknowledged responsibility for committing these offenses and stated that he should not have had his daughter with him. However, he then attempted to shift some of the responsibility for his drug addiction to the State, saying "I've been a drug addict for 18 years. . . . I've never received any type of help on my behalf from the State. I just been sentenced to the Department of Corrections." Sentencing Tr. p. 6. We conclude that Preston's guilty plea is entitled to moderate mitigating weight.

Having addressed the trial court's sentencing statement, we now address whether Preston's sentence is inappropriate under Rule 7(B) in light of the nature of the offense and his character. First, we note that Preston received a fifteen-year sentence, which is substantially less than the possible maximum sentence of twenty-eight years.[1] The nature of the offense was selling cocaine, and drug dealing is an egregious offense. Further, he involved his daughter in the sale by asking her to hide the money, for which she received a juvenile adjudication for dealing cocaine.

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[1] A Class B felony has a maximum sentence of twenty years. Ind. Code § 35-50-2-5. A Class C felony has a maximum sentence of eight years. I.C. § 35-50-2-5.

Preston's character reflects that he frequently violates the law. His adult criminal history includes nine prior felony convictions and fourteen misdemeanor convictions on a wide variety of charges that date back to 1988. His felony probation has been revoked three times, his parole has been revoked once, and his misdemeanor suspended sentence has been revoked once. Preston had three juvenile adjudications. Preston has also demonstrated positive aspects of his character. He acknowledged his drug addiction and sought out assistance on his own. He admitted to the current charges and pled guilty, although he shifted some of the blame to the State for his drug addiction. However, the positive aspects of Preston's character are certainly outweighed by his extensive criminal history. Given the nature of the offenses and Preston's character, we conclude that his fifteen-year sentence, well below the possible maximum, is appropriate.

Conclusion

Although Preston's guilty plea was entitled to moderate mitigating weight, the fifteen-year sentence imposed was not inappropriate in light of his character and the nature of the offenses. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.